

(2010) 03 PAT CK 0094

In the Patna High Court

Mukul Kumar Hansda and Janki Ram

APPELLANT

Vs

The State of Bihar, Abhimanyu Kumar Yadav and Sikandar
Yadav

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 482, 82, 83
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 326

Citation : (2010) 03 PAT CK 0094

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Two Police Officers have invoked inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure with a prayer to quash the entire criminal proceeding along with the order dated 4.10.1996 and 5.10.1996 by which without prosecution sanction order issued u/s 197 of the Code of Criminal Procedure, the learned Judicial Magistrate, 1st Class, Khagaria had taken cognizance of the offences under Sections 147, 379, 448 and 427 of the Indian Penal Code. The cognizance order was passed in Complaint Case vide Complaint Case No. 206(C) of 1995 filed by one Abhinandan Kumar Yadav who had stated in the complaint petition that he was residing in the house of his maternal uncle, namely, Prakash Yadav, in village Govindpur. After institution of complaint petition, the complainant was examined on S.A. and one more witness was examined in support of the complainant and, thereafter, by the order dated 4/5-10-11996, the learned Magistrate had taken cognizance for the offences under Sections 147, 379, 448, 427 of the Indian Penal Code.

2. Learned Counsel Sri Navendu Kumar, appearing on behalf of both the petitioners, has challenged the order of cognizance as well as the initiation of proceeding in the case mainly on the ground that apparently the present complaint petition was filed by the opposite party No. 2 with a view to create

false defence and also with malice. Learned Counsel for the petitioners, while referring to Annexure-3 to the petition, submits that reason for filing the present complaint petition was that on 29.6.1995, the petitioner No. 1, who was Deputy Superintendent of Police, received a complaint from villagers of village Gobindpur regarding un-authorized construction being made by Rajiv Kumar Yadav (Maternal Uncle of Complainant) and his brothers on a public land. After receiving the complaint, the petitioner No. 1 asked petitioner No. 2, who was Officer-in-charge of Maheshkhunt Police Station, to make an enquiry and he also rushed to place of occurrence along with petitioner No. 2 and other armed forces. Immediately after their arrival, the maternal uncle of the complainant along with his other brothers rushed to their house and returned armed with deadly weapons. Accused Ravindra Kumar Yadav was carrying a doubled barrel gun and other accused persons were also armed with country made pistol. Knowing well that the police officials were on official duty, the accused persons started abusing them and thereafter, they opened fire on the police party. The petitioner No. 1 and his Body Guard received fire arm injuries and with great difficulty, the police party retreated and saved their life. After returning from the place of occurrence, an F.I.R. vide Gogari P.S. Case No. 125 of 1995 was registered for the offences under Sections 147, 148, 149, 353, 333, 326, 504 and 307 of the Indian Penal Code and 27 of the Arms Act. During investigation of the Gogari P.S. Case No. 125 of 1995 after getting an information that the accused persons were taking steps to fly away after disposing of their properties, the Investigating Officer of the case prayed before the learned Magistrate for issuance of processes under Sections 82 and 83 of the Code of Criminal Procedure. Learned Counsel for the petitioners has placed Annexure-6 series to the petition. On the prayer made by the Investigating Officer, learned Magistrate issued processes under the aforesaid Sections. Learned Counsel for the petitioners has also referred to Annexure-7 series to the petition and submits that after being armed with the processes under Sections 82 and 83 of the Cr.P.C., the police personnel rushed to the house of accused Prakash Yadav as well as other accused persons, who were none-else, but the brother of accused Prakash Yadav. While discharging their official duty, the police official attached properties in accordance with law.

3. Learned Counsel for the petitioners, in view of the facts and circumstances mentioned above, submits that if in such a situation, accused persons are allowed to file a proceeding with such frivolous petition, it would be difficult for the police officials to discharge their duties particularly for complete investigation in a cases. He further submits that fact indicated above makes it clear that the present petition was filed only and only with a view to put pressure on the police officials including petitioners and also the initiation of the complaint petition is bad in law. A.M.P. Mehta is also of the view that the order of cognizance in the present case is not sustainable in the eye of law and he virtually supports the stand of the petitioners.

5. Despite appearance filed on behalf of opposite party No. 2, none has come forward to support the stand of opposite party No. 2. It appears that the

opposite party No. 2 after order of cognizance was satisfied that at least he had also put the police officials into trouble and as such no interest has been shown on behalf of the opposite party No. 2 before this Court and none has appeared.

6. I have examined the materials available on record and I have also perused the order of cognizance passed by the learned Magistrate. Fact indicated above is sufficient to indicate that the complaint petition was got filed in a well design manner by the persons, who were accused for serious offences i.e. in a case in which the accused persons had dared to open fire on the police party including the petitioner No. 1, who was Deputy Superintendent of Police. In the said occurrence, the Dy. S.P. received fire arm injury and any how they saved their life by way of retreating from the place of occurrence.

7. I am of the view that such proceeding should not be allowed to proceed any further and as such the order of cognizance as well as entire criminal proceeding in Complaint Case No. 206(C) of 1995 is hereby set aside.

8. The petition stands allowed.